

### **REMARKS**

The Examiner is thanked for the Final Official Action dated December 21, 2007. This amendment and request for reconsideration is intended to be fully responsive thereto.

The drawings were objected to by the Examiner for allegedly failing to show in the drawings "said at least one hole through said sidewall includes two holes" as recited in claim 4. Applicant respectfully disagrees. Figs. 1 and 2 of the present application clearly show a pair of vent holes 15 is provided along through a side wall surface of the vent tube 3 (see also page 4, lines 10-14) and Fig 7 depicts three through holes 115. The Examiner's reading that the two holes recited in claims 4, 14, & 18 is misplaced. The claims are clearly directed to where at least one hole "extending through the side walls, includes two hokes" clearly refers to two holes extending through the sidewall, not the contorted construction taken by the Examiner. It is completely proper to recite "at least one of" in an independent claim and have a dependent claim recite "said at least one includes two." The Examiner's objection to the drawings is thus not understood. As previously indicated the drawings clearly show a plurality of holes 15, 115 extending through the side wall of the casing. It is noted that Applicant has petitioned this very issues in co-pending U.S. application 11/139,533 which is also on appeal.

The Examiner objected to claim 11 because of a typographical error in claim 11. Claim 11 has been amended in accordance with the Examiner's comments.

Claims 6-7, 9 and 19-20 were objected to for containing indefinite language.

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Regarding claims 19-20 the Examiner asserts that there is insufficient basis for the recited “said opening.” However, the “opening” is clearly recited in both claims 1 & 7.

Claim 1 recited “a hollow casing including a continuous side wall having at least one hole there through, the hollow casing having **an opening** formed in a lower portion thereof.”

Claim 7 recites “a hollow casing secured substantially within said housing, said casing including a continuous side wall having at least one hole there through and terminating at a lower portion having **an opening** to facilitate return of entrained lubricant to said gear housing.”

The Examiner further rejected claims 6-7 & 16 for the recitation of the term “substantially”. Applicant maintains the claims conform to 35 U.S.C. 112 in its present form. Applicant’s use of the term substantially is nothing more than its plain and ordinary meaning “being largely but not wholly that which is specified”. *Webster’s Ninth New Collegiate Dictionary*, Merriam Webster 1985. In simple terms the use means at least mostly and is not so limited as completely. The use of the term Substantial and substantially is well and readily understood to those of ordinary skill in art as evidenced by its widespread use in claim terminology in U.S practice.

Regarding claims 6, the recitation “substantially closing” simply means that the casing is at last mostly closed and is not so limited as to require complete closure although within the scope of the claimed limitation. Applicant is not required to so narrowly claim and strictly conform to the precise details of the preferred embodiment. In fact the use of the precise terms “substantially closed” can be found within the claims of thousands of issued U.S. patents. As

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evidenced by a simple Boolean search "aclm/("substantially closing")"<sup>1</sup>. See also the Affidavit of Matthew F. Johnston within Exhibit A.

Regarding claim 7, the recitation "substantially within" simply means at least mostly within, at least most of the casing is within the housing. Here again, applicant's use of the term "substantially within" is readily understood those of such basic skill in the art. Here to, the use of the precise term "substantially within" can be found within the claims of thousands of U.S. issued patents.<sup>2</sup> See also the Affidavit of Matthew F. Johnston within Exhibit A.

Thus Applicant maintains that the claims presently conform to 35 U.S.C. 112 and the Examiner should withdraw the rejection.

Claim 21 was rejected under 35 U.S.C. 102 as being anticipated by Azuma et al, '118. While Applicant respectfully disagrees, claim 21 has been canceled rendering the rejection moot.

Claims 1, 2, 5, 6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Fukunaga (US 4,351,203) in view of, Azuma (US 4,595,118). Claims 3 & 11, were rejected under 35 U.S.C. 103(a) as being unpatentable over Fukunaga (US 4,351,203) in view of, Azuma (US 4,595,118) in view of, and further in view of Rodgers et al. (US 5,724,864). Claim 3 & 11, were rejected under 35 U.S.C. 103(a) as being unpatentable over Fukunaga (US 4,351,203) in view of, Azuma (US 4,595,118), and further in view of Rodgers et al. (US 5,724,864) in yet further view of Terwoerds '982. Claims 7-10, 12, 15-16 & 20 were rejected under 35 U.S.C.

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<sup>1</sup> See Results of Search in US Patent Collection db for: ACLM/"substantially closing" yielding Results of Search in US Patent Collection db for: ACLM/"substantially closing", 1081 patents. *See Attached Exhibit A.*

<sup>2</sup> See Results of Search in US Patent Collection db for: ACLM/"substantially within" yielding 6021 patents with the

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103(a) as being unpatentable over Azuma (US 4,595,118 in view of Fukunaga (U.S. 4,351,203). Claims 13 and 17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Azuma (US 4,595,118 in view of Fukunaga (US 4,351,203) in view of Rodgers '864. Claims 14 & 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Azuma (US 4,595,118 in view of Fukunaga (US 4,351,203) in view of Rodgers '864 in yet further view of Terwoerds '982. Applicant respectfully disagrees.

Regarding claims 1 & 7: The prior art fails to disclose the recited "hollow casing including a continuous side wall having at least one hole there through." None of the prior art references disclosure such a casing with hole in the side wall. Moreover, none of the references cited by the Examiner teaches, or provides any suggestion or motivation to provide at least one hole through the sidewall of the casing located on a longitudinal first side portion of the casing adjacent the long side of the vent tube. Thus, even if the combination of and modification of Azuma, Fukunaga and Rodgers suggested by the Examiner could be made, the resulting vent assembly still would lack the vent tube including the casing having at least one hole through the sidewall of the casing located on a longitudinal first side portion of the casing adjacent the long side of the vent tube.

Regarding claims 3 & 11, 17 the prior art is void of any combination of the recited casing and beveled vent tube. Azzuma fails to disclose the vent tube having the first open end that is obliquely formed and defining a long side and a short side of the vent tube within the casing, and the hole through the sidewall of the casing being located on a longitudinal first side portion of the

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identical recitation "Substantially within". See *Attached Exhibit A*.

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casing adjacent the long side of the vent tube. In fact, the vent tube (the plug body 32) of Azuma is truncated and the casing (the deflector body 24) of Azuma has no vent openings at all passing through the side wall thereof. Fukunaga fails to disclose the vent tube extending within the hollow casing altogether. Thus, even if the combination of and modification of Fukunaga and Azuma suggested by the Examiner could be made, the resulting vent assembly still would lack the vent tube having the obliquely formed first open end defining a long side and a short side of the vent tube within the casing, and the hole through the sidewall of the casing being located on a longitudinal first side portion of the casing adjacent the long side of the vent tube.

Moreover, the Examiner has failed to establish a prima-facie case of obviousness. The air-breather of Azuma is designed to be immersed in the oil bath (see col. 3, lines 28-31), while the gear box breather of Fukunaga is designed to be mounted to the housing at the upper portion thereof, substantially above the oil level (see col. 2, lines 12-15 and Figs. 1-2). Thus, the prior art provides no suggestion or motivation to combine and/or modify the teachings of Azuma and even if the deflector body 24 of Azuma is provided with at least one hole as taught by Fukunaga, as suggested by the Examiner, then the oil would enter into the deflector body 24 and plug the inlet hole in the plug body 32. However, Azuma specifically discloses that “the baffle plate 40 effectively interrupts the flow of oil so that an air space 44 surrounding the opening 24A in the deflector 20 is formed on the downstream side of the baffle plate 40, so that the entry of oil into the deflector body 24 is prevented” (emphasis added). In other words, providing the deflector body 24 of Azuma with at least one hole as taught by Fukunaga, would effectively prevent

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functioning of the air-breather device 10 of Azuma as intended.

Regarding claims 4, 14, 18, the prior art is simply void of any teaching of multiple holes, let alone longitudinally coextensive holes, in the side wall of the claimed casing.

Regarding claims 19-20, the prior art clearly fails to disclose the recited bottom end wall substantially closing the casing.

Therefore, the combination and/or modification the teachings of Azuma, Fukunaga and Rodgers cannot be made, thus, the rejection of claims 1-3 under 103(a) is improper.

Claim 4 was rejected under 35 U.S.C. 103(a) as being unpatentable over Fukunaga in view of Azuma in view of Fukunaga and Rodgers and further in view of Terwoerdes et al. (US 3,422,982). Applicant respectfully disagrees.

The prior art simply fails to disclose and provides no suggestion or motivation to arrive at the Examiner's resultant modifications to support the obviousness rejection. The Examiner has clearly relied on hindsight in a veiled attempt to reconstruct the claimed invention through piecemeal combination of numerous distinct prior art references. It remains a fact that the prior art fails to disclose the recited hole in the side wall of the casing. In order to even establish a prima-facie cases of obviousness, the prior art must teach or suggest each and every limitations. MPEP 2143. Thus as the prior art is so void of the casing with side walls, the casing further being disposed within the vent tube, the Examiner has failed to even establish the prima-face case of obviousness. Thus the rejections under 35 U.S.C. 103 are improper.

It is respectfully submitted that claims 1-19 define the invention over the prior art of

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record and are in condition for allowance, and notice to that effect is earnestly solicited.

Should the Examiner believe further discussion regarding the above claim language would expedite prosecution they are invited to contact the undersigned at the number listed below.

Respectfully submitted,

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